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MR. LANGLEY: That's correct.

JUDGE SIPPEL: -- that the witness has now? And what is up on the screen as 52 -- received in evidence as 52 is the corrected version?

MR. LANGLEY: That is correct, Your Honor.

JUDGE SIPPEL: All right. Well, then I would like to just stay with the corrected version.

MR. COOK: Very good, Your Honor. In fact my question --

JUDGE SIPPEL: And -- and -- go ahead. I think that's -- I want -- wait a minute. I just want to put this to rest. All right.

MR. COOK: Yes.

JUDGE SIPPEL: So as far as -- as the pages that are before the witness right now, we don't really have to refer to them any more.

MR. COOK: In fact, I have no further questions. My question was more a question that focused on notice of when this witness was receiving information, not on any specific numbers.

JUDGE SIPPEL: Okay.

1 MR. COOK: So I'm done with that.

2 JUDGE SIPPEL: Okay.

3 MR. COOK: Okay.

4 JUDGE SIPPEL: Thank you.

5 MR. COOK: Let's see. I'm moving on.

6 BY MR. COOK:

7 Q Now if I understand correctly, even though
8 you say pole capacity is not your area, you take issue
9 with Alabama Power's requirement that full capacity be
10 demonstrated before any rate can be charged above
11 marginal costs testifying in your testimony that such
12 a requirement quote is contrary to end quote you
13 understanding of business valuation principles, right?

14 A That's correct.

15 Q Okay. Now let's turn to the second prong
16 of Alabama Power. You have also -- or you agree,
17 right, that Gulf Power has not asked you to study the
18 question of whether it has incurred a lost
19 opportunity, right?

20 A That was not explicitly stated. However,
21 there is an element of that within the -- the work
22 that I did.

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1 Q Okay. Could I direct your attention to
2 page 255 of the Deposition Excerpts. And within that,
3 to page 209 of your deposition --

4 A Okay.

5 Q -- where line eight, (reading) "Question.
6 Have you been asked by Gulf Power to study the issue
7 of lost opportunity. Answer. No. As to it's poles?
8 Answer. No" (end reading). Did I read that
9 correctly?

10 A Yes.

11 Q Okay.

12 A And I hope that what I just said is, and
13 I certainly meant the same thing, that's -- that was
14 not an explicit request. However, there- there --
15 there is probably an element of that within what I was
16 asked to do, which is to determine the appropriate
17 fair market value for -- for elevated communication
18 corridor or pole space in this case.

19 Q But you acknowledged at your deposition --
20 when I asked you straightforwardly have you been asked
21 to study the issue of lost opportunity, you gave a one
22 word answer, no, right?

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1 A And again, I took that question to mean -

2 -

3 Q Is that correct?

4 MR. ESTES: Objection. Asked and
5 answered. He's already asked this question three
6 times. He's answered it twice.

7 JUDGE SIPPEL: Yes. Wait. I -- I -- I --
8 wait. I want to sustain that objection. You got him
9 exactly where you wanted him on respect to the
10 deposition. Now, your next question is what?

11 MR. COOK: I'll move on. What I would ask
12 is when I do ask a yes or no question that the answer
13 start with a yes or no and then the witness may
14 proceed to explain. I'll move on.

15 MR. ESTES: Your Honor, the witness has a
16 right to give a full and complete answer whether Mr.
17 Cook wants to demand a yes or no question, he can
18 demand it. But the witness has a right to give full
19 and complete, and if I have to do it all on redirect,
20 and we can be here until six o'clock tonight.

21 JUDGE SIPPEL: Well --

22 MR. ESTES: Or we can let the witness

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1 fully answer the question.

2 MR. COOK: Well, actually, Your Honor,
3 that's not accurate. A witness, on cross, the cross
4 questioner is entitled to a yes or no answer when the
5 question asks for a yes or no. And you're right, the
6 proper place is on redirect.

7 JUDGE SIPPEL: Yes, I -- well, I agree
8 with both of you, but the point is is that I'm trying
9 to get this thing moved along. You should be -- you
10 should have answered him yes or no on that,
11 particularly when he had you pinned down on your
12 deposition answers. That's all he was asking.
13 However, the significance of him not saying yes or no
14 is really de minimus because it's established. All
15 right. Now --

16 MR. COOK: Let's --

17 JUDGE SIPPEL: -- but what are you going
18 to do with this information?

19 MR. COOK: Move forward to ask more
20 questions.

21 JUDGE SIPPEL: Didn't he -- did you say
22 something -- now you said something, Mr. Spain, about

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1 no, you didn't -- you didn't actually do -- you didn't
2 actually -- you didn't specifically do a -- a lost
3 opportunity analysis but that it somehow or other was
4 implied in how you addressed the problem? Did I hear
5 you right?

6 THE WITNESS: Yes, sir, that -- that --
7 the issue of lost opportunity is -- is related
8 somewhat to determine the appropriate method for
9 determining fair market value of pole space.

10 JUDGE SIPPEL: All right. Now do you want
11 to ask him any questions on that answer?

12 MR. COOK: I guess my question would be if
13 -- if that's the case, then at your deposition when I
14 said have you been asked to study the issue of lost
15 opportunity, why did you say simply no?

16 THE WITNESS: I took that question to mean
17 have I been specifically explicitly asked to study
18 that, and specifically and explicitly, I was not asked
19 to study that.

20 MR. COOK: Okay. Very good. That was my
21 question.

22 BY MR. COOK:

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1 Q Now you have not looked at whether
2 attachments by any of the four cable companies in this
3 case have prevented Gulf Power from leasing pole space
4 to a third party, right?

5 A I've not assessed that.

6 Q Okay. And Gulf has not shown you any
7 evidence that it had incurred an actual loss that
8 might be a basis for departing from the FCC pole rate
9 formula, right?

10 A I -- I've not seen a calculation of actual
11 loss based on that, no.

12 Q Okay. The scope of work that you did did
13 not involve trying to determine whether cable
14 attachments have actually caused Gulf Power to lose
15 money, right?

16 A No. Can you rephrase that. I want to
17 make --

18 Q Sure.

19 A -- sure I understand your question. I'm
20 sorry.

21 Q Your scope of work -- when you got your
22 scope of work from Gulf Power, that did not involve

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1 trying to determine whether cable attachments had
2 actually caused Gulf Power to lose money, right?

3 A No.

4 Q Okay. Meaning no it did not?

5 A No, it did not.

6 Q Okay. For the record, okay. There's some
7 of those questions where you say no and you look at it
8 later. Okay. And you have not seen any evidence that
9 Gulf Power has any unreimbursed costs caused by the
10 cable operators' attachments, right?

11 A I've not seen records of such.

12 Q Okay. But you do offer an opinion in this
13 proceeding, I believe it's testimony page 26, that the
14 Eleventh Circuit Alabama Power language about another
15 buyer waiting in the wings must be a reference to a
16 hypothetical buyer, right.

17 A Based on my reading and interpretation of
18 that as a CPA and a CVA, yes, that looks to me like a
19 reference to the hypothetical buyer in a fair market
20 value situation.

21 Q Okay. And y our reason for saying that
22 the court must mean a hypothetical buyer is not

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1 something in the court's opinion itself but rather
2 your underlying instruction to use fair market value
3 as your standard, right?

4 MR. ESTES: Objection, Your Honor. It
5 completely mischaracterizes the answer he just gave,
6 which was -- well, I'll let the record show what is
7 his answer that he just gave. That's a complete
8 mischaracterization of what he just said.

9 JUDGE SIPPEL: You don't have to -- you
10 really should be asking questions and not
11 characterizing what he said. Then we don't have to
12 get into this.

13 MR. COOK: Okay. I'd like to direct the
14 witness' attention to page 255 --

15 JUDGE SIPPEL: Of his deposition --

16 MR. COOK: -- of his -- of the Deposition
17 Excerpts, and within that, two pages, 210 to 211 --
18 actually, page -- yeah, okay -- 210 to 211 of the
19 Deposition -- on Complainants Deposition Excerpts,
20 page 255.

21 JUDGE SIPPEL: It looks like the same cast
22 as we have here.

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1 MR. COOK: Where it says page -- line 12
2 (reading) "Because the definition" (end reading) --
3 sorry -- (reading) "Question. And why do you say
4 that" (end reading). Let me back up to line six.
5 (Reading) "Okay, you say that any interpretation of
6 this phrase, requiring an actual buyer or actual
7 buyers would be inconsistent with the principles of
8 fair market value standard. Is that right. That's
9 correct" (end reading). Did I read that question and
10 answer correctly.

11 THE WITNESS: Correct.

12 MR. COOK: Okay.

13 BY MR. COOK:

14 Q And then jumping over to 211, line one,
15 (reading) "So are you interpreting the APCo test as to
16 that language to require only a hypothetical buyer.
17 Answer. What I'm saying is that as a valuation
18 analyst using fair market value as a standard of
19 value, the assessment is made as to the value between
20 for exchange of property between a hypothetical buyer
21 and a hypothetical seller" (end reading). Did I read
22 that correctly?

1 A That's correct.

2 Q Okay. Now, do you recall from your review
3 of the Alabama Power case that the Eleventh Circuit
4 said that a party seeking to recover for a taking has
5 the burden of proving loss as well as the amount of
6 any loss?

7 A I -- I -- I think I recall that.

8 Q Okay. And if the Alabama Power Eleventh
9 Circuit test requires proof of an actual buyer of pole
10 space that couldn't be accommodated and therefore that
11 Gulf was going to be actually out some money, that's
12 a problem for you, because the fundamental touchstone
13 of your work was fair market value, right?

14 A That -- that could be information that
15 would be directly related to what I was aske to do.

16 Q Okay. Let me draw your attention to page
17 256, and there, page 213 --

18 JUDGE SIPPEL: It's 256 of the excerpts?

19 MR. COOK: Two fifty-six of the excerpts.

20 JUDGE SIPPEL: And then you're going to
21 page 213 of the deposition.

22 MR. COOK: Two thirteen.

1 JUDGE SIPPEL: Are you following that --

2 THE WITNESS: Yes, sir.

3 MR. COOK: And on page 213 of the
4 deposition, line 15, (reading) "Question. If the APCo
5 test requires proof of an actual buyer of pole space
6 waiting in the wings, do you take issue with that
7 requirement. Mr. Estes -- same objection. Witness
8 answer -- again, that's difficult for me to interpret
9 as a valuation analyst in light of what I understand
10 and know the accepted definition of fair market value
11 to be" (end reading). Did I read that correctly?

12 A You read that correctly.

13 Q Okay. In fact, it's your understanding in
14 this case, isn't it, that to the extent Gulf Power is
15 bringing this litigation trying to meet the Alabama
16 Power requirements, it is relying only upon
17 hypothetical opportunities to lease pole space, right?

18 MR. ESTES: Objection, Your Honor. He's
19 asking Mr. Spain all the evidence that Gulf Power put
20 into this case?

21 JUDGE SIPPEL: Sustained.

22 MR. COOK: I'm asking the witness for his

1 understanding of his -- of the party's claim that has
2 retained him. I think that's a entirely proper
3 question --

4 MR. ESTES: Your Honor --

5 MR. COOK: -- because this-- this witness
6 is an expert, and he's talking about his understanding
7 of the facts of his party's claim. He has taken issue
8 with what we believe is the governing legal standard,
9 Alabama Power, and said instead of burden of proving
10 loss --

11 JUDGE SIPPEL: Wait, wait, wait. This is
12 -- you're getting into -- yeah, you're getting into
13 things that -- I'm going to sustain the objection.
14 I'm going to say this to you. You have a right to ask
15 this witness what he relied upon in giving his
16 opinion. Okay? That's what you can ask him. I think
17 you've done that to a great degree.

18 MR. COOK: Okay.

19 JUDGE SIPPEL: And with respect to the
20 hypothetical, I don't know how many ways, shapes and
21 forms you want to establish the fact that he looks
22 upon the buyer as being a hypothetical buyer. That is

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1 not going to change.

2 MR. COOK: And -- and this -- this
3 question was only a slight variation, which is
4 essentially what has your client told you about what
5 they're relying on? Is ti just --

6 JUDGE SIPPEL: No. No, no, no, no, no,
7 no, no. I keep telling you, you can ask this witness
8 what he relied on.

9 MR. COOK: Okay.

10 JUDGE SIPPEL: I don't care what the
11 client relied on.

12 MR. COOK: Okay.

13 BY MR. COOK:

14 Q Did you rely -- I'm sorry --

15 JUDGE SIPPEL: Ask him what he relied on.

16 BY MR. COOK:

17 Q Did you rely --

18 JUDGE SIPPEL: Mr. Cook?

19 MR. COOK: Yes.

20 JUDGE SIPPEL: Ask him what he relied on.

21 MR. COOK: Okay.

22 BY MR. COOK:

1 Q What did you rely upon for any evidence of
2 loss?

3 JUDGE SIPPEL: We want to know what he
4 relied upon for purposes of formulating his opinion,
5 and then you can narrow it down to loss. But let's
6 start with what he relied upon to formulate his
7 opinion. Okay?

8 MR. COOK: Okay. But I -- I have to ask
9 the court's indulgence. I'm confused when you say ask
10 him what he relied upon, you mean generally the entire
11 scope of everything?

12 JUDGE SIPPEL: He should be able to tick
13 it right off for your.

14 MR. COOK: Okay. I'd like to pose the
15 judge's question. What did you rely on.

16 THE WITNESS: That -- I've relied upon my
17 experience as a CPA, my experience as a CVA, the
18 industry research that I did that specifically relates
19 to utilities, my experience as a CPA with a dozen or
20 so or more years in the utilities industry, both
21 electric distribution, natural gas distribution, water
22 systems as well, my experience as a CVA that relates

1 to valuing businesses and -- and all that that entails
2 and specific readings that I did in preparation for
3 this case.

4 BY MR. COOK:

5 Q And did you rely on any instance where an
6 actual buyer of pole space approached Gulf about an
7 opportunity to get up on its poles and Gulf was not
8 able to accommodate?

9 A I've not seen documents that relate to
10 that.

11 Q So the answer would be no?

12 A No then.

13 Q Okay. Now you also take issue in your
14 testimony with another requirement within Alabama
15 Power showing proof of a higher valued use within
16 Gulf's own operations. Is that correct?

17 A That's -- that's difficult for me to
18 interpret, again, as a valuation analyst.

19 Q Okay. So you -- when you say it's
20 difficult for you to interpret, you take issue with it
21 -- any requirement that Gulf be required to show a
22 higher valued use within its operations? Is that

1 right?

2 JUDGE SIPPEL: Mr. Cook, it makes no
3 difference whether he takes issue with it. He's told
4 you -- he's told you that he has difficulty --

5 MR. COOK: Okay. I'll move on.

6 BY MR. COOK:

7 Q At the -- you have never seen Gulf Power's
8 petition for reconsideration and request for
9 evidentiary hearing, have you?

10 A I apologize if -- if I don't recall
11 exactly which legal filings that I've looked at and
12 haven't, but I -- I think have looked at that but --

13 Q Okay. Could I direct your attention to
14 Deposition Excerpts page 257, and within that to page
15 217, on line four, I say, (reading) "Okay. Let me
16 show you a document which is called Gulf Power
17 Company's petition for reconsideration and request for
18 evidentiary hearing to the FCC dated June 23rd, 2003"
19 (end reading). Then there's (reading) "Mr. Cook, what
20 is this. Exhibit 10. The document referred to is
21 marked for identification as Spain Exhibit 10" (end
22 reading). And I have a question and ask you to take

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1 a look at this first just to page through it and ask
2 you if you've ever seen this before. (Reading)
3 "Answer. Perusing document. I don't think I've seen
4 this" (end reading). Did I read that correctly?

5 A That's correct.

6 MR. ESTES: Your Honor, I'm going to
7 object. That is completely improper impeachment. The
8 question was have you ever seen the document. Mr.
9 Cook showed the document to him. I mean how's he
10 impeaching him by saying that he -- I mean he -- at
11 the deposition had not read it. Of course he's seen
12 it.

13 MR. COOK: Well, to answer -- to answer
14 Mr. Estes' comment, I wanted to ask that question by
15 saying at the time of your deposition, you had never
16 seen this, but I was afraid that Mr. Estes would jump
17 up and make an objection about that, so I -- I shied
18 away from saying at the time of your deposition and
19 asked it generally. But I think we've established
20 that point, so I'll move on.

21 BY MR. COOK:

22 Q If -- if I may, at the time of your

1 deposition, you had not seen the hearing designation
2 order in this case, right?

3 JUDGE SIPPEL: Does that really make a
4 difference?

5 MR. COOK: Well, Your Honor, what I'm
6 trying to establish here is that the expert witness
7 that they have tendered to provide an opinion in this
8 case is not familiar with the issues as designated by
9 the Bureau. I think that's a very important point for
10 Your Honor, as the trier of fact, to understand.

11 JUDGE SIPPEL: Well, I'm not so sure as --
12 you know, you don't want to turn the expert into a
13 lawyer that knows everything about the case. You want
14 an expert to testify to his narrow field of expertise.
15 And I don't know if he wasn't prepared at the
16 deposition the way you think he should have been
17 prepared. What difference does that make?

18 MR. COOK: Well, I think, as I just stated
19 a moment ago, this -- we're here to address a specific
20 issue as designated by the Bureau in the hearing
21 designation order. I wanted to get it across or -- or
22 to communicate and, again, respectfully to you as the

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1 trier of fact that this expert witness doesn't know
2 what the issues set for designation are. Now that's
3 fine. We've established that again.

4 JUDGE SIPPEL: Well, no, no. Don't tell
5 me what we've established.

6 MR. COOK: Oh, I'm sorry.

7 JUDGE SIPPEL: That's proposed findings.
8 Just ask the witness the question.

9 MR. COOK: Okay.

10 JUDGE SIPPEL: I'm having a problem with
11 the relevance. That's -- the problem is exactly what
12 difference does it make that he did or didn't see an
13 HDO at his deposition when we're trying to determine
14 whether or not he's qualified to give the opinion he's
15 given today -- today? All right? So, please --

16 MR. COOK: Okay.

17 JUDGE SIPPEL: -- stick with it.

18 BY MR. COOK:

19 Q You were not asked to analyze Gulf Power's
20 marginal costs in this case, right?

21 A No, I was asked to determine the
22 appropriate method for determining fair market value

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1 of their pole space.

2 Q And you have no idea what Gulf Power's
3 marginal costs actually are for the four cable
4 operator complainants in this case, right?

5 A I've not done a calculation.

6 Q Okay. But you -- you actually said
7 previously you have no idea what the marginal costs of
8 the cable operators are --

9 MR. ESTES: Your Honor, asked and
10 answered.

11 JUDGE SIPPEL: Sustained. It's been asked
12 and answered.

13 BY MR. COOK:

14 Q And you do not know what rates the cable
15 operator complainants have paid to Gulf Power during
16 the last several years, right?

17 A I mean I -- I know the range. I think
18 it's in the \$6.00 range or so.

19 Q Okay. And this is the first case that you
20 worked on that has involved the FCC pole attachment
21 cable rate formula, right?

22 MR. ESTES: Your Honor, asked and

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1 answered. He asked that about --

2 JUDGE SIPPEL: Sustained.

3 MR. ESTES: -- twenty-five minutes ago.

4 BY MR. COOK:

5 Q You aren't able to say what the categories
6 in the FCC formula are for the carrying charge, right?

7 A I -- I think the carrying charge allocates
8 -- takes a look at plant, operating costs, and
9 administrative costs and -- and makes a determination
10 as to -- to cost of the pole and the allocates the
11 other costs that I just mentioned based on a space
12 allocation factor.

13 Q Okay. And you don't know the specific
14 FERC accounts that the FCC has stated should be
15 included in the pole rate carrying charge, do you?

16 A I may get it wrong. I haven't necessarily
17 committed it to memory, but I think it may be 593 and
18 then a few of the 900 series accounts, about 920 up
19 through maybe 928 or so, and again, I would need to
20 refresh my memory by looking at the list and then
21 there are certain deferred tax accounts in the 408
22 series. They're included. And -- and the basis for

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1 all of that is the plant numbers that are included in,
2 I believe, 364, 365, and 369 --

3 Q Could I draw your attention --

4 A If I'm wrong, I apologize.

5 Q Could I draw your attention to
6 Complainants Deposition Excerpts page 259 --

7 A Okay.

8 Q -- where I said -- 259, and within that,
9 page 232 --

10 A Yes.

11 Q At 231, 232, (reading) "Question. Do you
12 know what electric utility FERC accounts go into the
13 FCC formula. Answer. That's what I was referring to
14 a moment ago. Specifically, I can't tell you exactly
15 which accounts correspond as I'm sitting here right
16 now to each of those expense items, but, you know,
17 they're somewhere in the 500's and probably a couple
18 in the 900's" (end reading). Did I read that
19 correctly?

20 A You did.

21 Q Okay.

22 JUDGE SIPPEL: Well, what's the purpose

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1 for that?

2 MR. COOK: Your Honor, again, I'm -- I'm -

3 -

4 JUDGE SIPPEL: He's --

5 MR. COOK: -- trying to establish --

6 JUDGE SIPPEL: -- he's --

7 MR. COOK: -- what the witness does and
8 does not know.

9 JUDGE SIPPEL: But if I'm hearing you
10 right, he said essentially the same thing today as he
11 said in his deposition on that point, essentially.

12 MR. COOK: I'll move right on.

13 JUDGE SIPPEL: Well, please don't take
14 this back to do it over again, please?

15 MR. COOK: Okay. I'm trying to -- to go
16 through by category, Your Honor, and I'm almost done.
17 Before we get to the testimony per se what the
18 witness' general knowledge and lack of knowledge --

19 JUDGE SIPPEL: Please ask your next --

20 MR. COOK: -- on all points --

21 JUDGE SIPPEL: Mr. Cook, ask your next
22 question.

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1 MR. COOK: Okay.

2 BY MR. COOK:

3 Q As of the time of your deposition, you had
4 not seen the FCC Commission's order of May 2001 in
5 Alabama Power, right?

6 A I think that's right.

7 Q Okay. Now I'd like to come back to your
8 statement in your report that you're trying to
9 determine the fair market value of Gulf's pole
10 attachments. When you wrote your expert summary
11 report, which was March 3rd of this year, 2006, you
12 did not know that in paragraph 53 of the Commission's
13 Alabama Power May 2001 decision, it had concluded that
14 the valuation standards for determining fair market
15 value are quote particularly unsuited for valuing pole
16 attachments, did you?

17 A I didn't know that that language existed
18 at the time that I did my report. However, I don't
19 know that, and I've since read that, and I don't know
20 that it impacted the work that I did.

21 Q Okay. Now in your expert opinion, you
22 rely upon the notion of a fair market value standard

1 being based upon the prices that willing buyers and
2 sellers would agree to for pole attachments, right?

3 A I think that's right.

4 Q But when you quoted the willing buyer,
5 willing seller standard in your expert summary report,
6 you had not read the Commission's May 2001 Alabama
7 Power ruling in paragraph 55 where it said there are
8 no arms lengths transactions reflecting the prices
9 paid by willing buyers and sellers for comparable pole
10 attachments, right?

11 A Whatever -- I hadn't read that at the
12 time, and whatever conclusion had been reached at that
13 time, I don' know what information went into
14 concluding that. However, I'm -- I'm certainly done
15 my own analysis and -- and am prepared to offer the --
16 the result of my analysis, and it speaks to that
17 issue. But that was the court's finding, and -- and
18 I -- I don't know what went into that.

19 Q And you had not read, when you wrote your
20 report, the Commission's finding in paragraph 55 that
21 there is quote no non monopoly market in pole
22 attachments, had you?

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1 A Again, I hadn't read that, but -- and I
2 don't know what went into that, but since then, I have
3 read that and done some of my own research, and I'm
4 prepared to share that with you.

5 Q In fact, when I showed you at your
6 deposition the Commission's order, you said with
7 reference to the Commission's conclusion that
8 replacement costs are particularly unsuited for
9 valuing pole attachments, you said that appears to be
10 the opinion they're expressing here, but I don't know
11 that I agree with that, right?

12 A If that's what I said, then that's what I
13 said.

14 JUDGE SIPPEL: If I'm hearing you
15 correctly, today you are prepared to explain further
16 as to what your -- what your professional reaction is
17 to what the Commission wrote?

18 THE WITNESS: Yes, sir, and -- and I'll
19 offer it to you now if you'd like to hear it, but,
20 yes, sir.

21 JUDGE SIPPEL: Well, I'm -- I don't want
22 to interfere with his cross examination. I want him

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1 to be aware of what it is that you're prepared to
2 testify to. Maybe this would be coming out on direct.

3 MR. COOK: Your Honor, I have -- I have
4 one more question -- I know we're 15 minutes over --
5 before it would be a good breaking point. I'm about
6 one-third of the way through my total cross
7 examination, so if I may, I'd ask one more question,
8 and then ask to pick up in the morning depending on
9 what Your Honor wants to do.

10 JUDGE SIPPEL: Well, ask your next
11 question and let's see where we are.

12 MR. COOK: Okay.

13 BY MR. COOK:

14 Q Mr. Spain, in this case, you were not
15 rendering an independent analysis or calculation.
16 Your only task was to analyze the appropriate method
17 for calculating fair market value of pole attachments,
18 right?

19 A My task was to determine the appropriate
20 method for determining fair market value of pole
21 attachments.

22 Q Okay. And you were not rendering an

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1 independent analysis or calculation, right?

2 MR. ESTES: Objection, Your Honor, to the
3 extent he's characterizing whether his analysis was
4 independent or not - that is a complete
5 characterization is not --

6 JUDGE SIPPEL: I'm going to sustain the
7 objection.

8 MR. ESTES: Thank you, Your Honor.

9 MR. COOK: May I direct -- I certainly
10 would not want to put words in the witness' mouth.
11 May I direct you to Complainant's Deposition Excerpts
12 page 231, and within that, page 85 -- page 85, line 8,
13 (reading) "Okay. So is it accurate to say in this
14 case you're rendering an opinion about the
15 reasonableness of Gulf's Power's rate calculation,
16 you're not rendering an independent analysis as to the
17 value of Gulf's pole space. Answer. I'm not
18 rendering an independent analysis or calculation, and
19 my task was to analyze the appropriate method for
20 calculating fair market value of the pole attachment"
21 (end reading). Did I read that correctly?

22 A Yes.

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1 MR. COOK: Okay. I think this is a -- a
2 good breaking point, Your Honor.

3 JUDGE SIPPEL: Let me go off the record.

4 (Whereupon, the matter went off the record
5 at 4:15 p.m. and back on the record at 4:19 p.m.)

6 JUDGE SIPPEL: Back on the record. It's
7 been discussed with respect to scheduling. This
8 witness, Mr. Spain, will be on the stand tomorrow
9 morning at 9:00, and we will take matters up with
10 respect to the various motions with respect to the --
11 the -- the relevance of testimony of experts, and we
12 would then be expecting to have your expert start in
13 the afternoon. That would be Ms. --

14 MR. COOK: Kravtin.

15 JUDGE SIPPEL: -- Kravtin. Okay. So, that
16 will be it. We're in recess until nine tomorrow
17 morning. Thank you very much.

18 (Whereupon, the foregoing matter was
19 adjourned at 4:19 p.m.)

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Name of Hearing

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Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

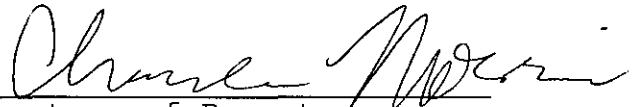
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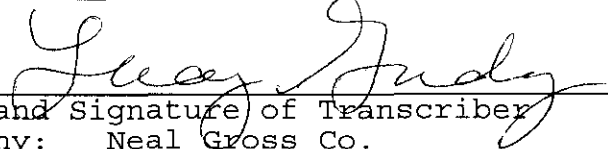
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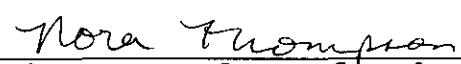
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